

AGRICULTURE CODE

TITLE 5. PRODUCTION, PROCESSING, AND SALE OF HORTICULTURAL PRODUCTS

SUBTITLE A. SEED AND FERTILIZER

CHAPTER 62. SEED AND PLANT CERTIFICATION

Sec. 62.001. DEFINITIONS. In this chapter:

(1) "Board" means the State Seed and Plant Board.

(2) The term "certified seed" or "certified plant" means a seed or plant that has been determined by a seed or plant certifying agency to meet agency rules and standards as to genetic purity and identity.

(3) "Plant" includes plant parts.

Acts 1981, 67th Leg., p. 1134, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 62.002. STATE SEED AND PLANT BOARD. (a) The State Seed and Plant Board is an agency of the state. The board is composed of:

(1) one individual, appointed by the president of Texas A&M University, from the Soils and Crop Sciences Department, Texas Agricultural Experiment Station, Texas A&M University;

(2) one individual, appointed by the president of Texas Tech University, from the Department of Plant and Soil Sciences, Texas Tech University;

(3) one individual, appointed by the commissioner, licensed as a Texas Foundation, Registered, or Certified seed or plant producer who is not employed by a public institution;

(4) one individual, appointed by the commissioner, who sells Texas Foundation, Registered, or Certified seed or plants;

(5) one individual, appointed by the commissioner, actively engaged in farming but not a producer or seller of Texas Foundation, Registered, or Certified seed or plants; and

(6) the head of the seed division of the department.

(b) An individual appointed from a state university or the department serves on the board as an ex officio member. A member serves for a term of two years and until a successor has qualified. Members serve without compensation but are entitled to reimbursement by the state for actual expenses incurred in the

performance of their duties.

(c) A member whose employment is terminated with the agency or department from which the member was appointed or who ceases to be engaged in the business or professional activity that the member was appointed to represent vacates membership on the board.

(d) The commissioner shall designate a member of the board as the chairman to serve in that capacity at the pleasure of the commissioner. The board annually shall elect a vice-chairman and secretary. The board shall meet at times and places determined by the chairman.

(e) Appointments to the board shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointees.

Acts 1981, 67th Leg., p. 1134, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1985, 69th Leg., ch. 479, Sec. 185, eff. Sept. 1, 1985; Acts 1985, 69th Leg., ch. 729, Sec. 14, eff. Sept. 1, 1985; Acts 1989, 71st Leg., ch. 311, Sec. 1, eff. Aug. 28, 1989; Acts 1995, 74th Leg., ch. 419, Sec. 1.17, eff. Sept. 1, 1995.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. [1016](#)), Sec. 4.04, eff. September 1, 2009.

Sec. 62.0021. MEETINGS BY TELEPHONE CONFERENCE CALL. (a) Notwithstanding Chapter [551](#), Government Code, the board may hold an open or closed meeting by telephone conference call if immediate action is required and the convening at one location of a quorum of the board is inconvenient for any member of the board.

(b) The meeting is subject to the notice requirements applicable to other meetings.

(c) The notice of the meeting must specify as the location of the meeting the location where meetings of the board are usually held.

(d) Each part of the meeting that is required to be open to the public shall be audible to the public at the location specified in the notice of the meeting as the location of the meeting and shall be tape-recorded. The tape recording shall be made available to the public.

Added by Acts 1993, 73rd Leg., ch. 74, Sec. 1, eff. May 5, 1993.  
Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(78), eff. Sept. 1, 1995.

Sec. 62.0022. BOARD CONFLICT OF INTEREST. (a) An officer, employee, or paid consultant of a Texas trade association in the field of agriculture may not be a member of the board.

(b) A person who is the spouse of an officer, manager, or paid consultant of a Texas trade association in the field of agriculture may not be a member of the board.

(c) For the purposes of this section, a Texas trade association is a nonprofit, cooperative, and voluntarily joined association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

(d) A person may not serve as a member of the board or act as the general counsel to the board if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the board.

Added by Acts 1995, 74th Leg., ch. 419, Sec. 1.18, eff. Sept. 1, 1995.

Sec. 62.0023. REMOVAL OF BOARD MEMBER. (a) It is a ground for removal from the board if a member:

(1) does not have at the time of appointment the qualifications required by Section 62.002;

(2) does not maintain during service on the board the qualifications required by Section 62.002;

(3) violates a prohibition established by Section 62.0022;

(4) cannot because of illness or disability discharge the member's duties for a substantial part of the term for which the member is appointed; or

(5) is absent from more than half of the regularly scheduled board meetings that the member is eligible to attend

during a calendar year unless the absence is excused by majority vote of the board.

(b) The validity of an action of the board is not affected by the fact that it is taken when a ground for removal of a board member exists.

(c) Repealed by Acts 2009, 81st Leg., R.S., Ch. 506, Sec. 4.09(1), eff. September 1, 2009.

Added by Acts 1995, 74th Leg., ch. 419, Sec. 1.18, eff. Sept. 1, 1995.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. [1016](#)), Sec. 4.09(1), eff. September 1, 2009.

Sec. 62.0024. STANDARDS OF CONDUCT. The commissioner or the commissioner's designee shall provide to members of the board, as often as necessary, information regarding their qualification for office under this chapter and their responsibilities under applicable laws relating to standards of conduct for state officers or employees.

Added by Acts 1995, 74th Leg., ch. 419, Sec. 1.18, eff. Sept. 1, 1995.

Sec. 62.0025. BOARD MEETINGS; ADMINISTRATIVE PROCEDURE.

(a) The board shall develop and implement policies that provide the public with a reasonable opportunity to appear before the board and to speak on any issue under the jurisdiction of the board.

(b) The board is subject to Chapter [551](#), Government Code, and Chapter [2001](#), Government Code.

Added by Acts 1995, 74th Leg., ch. 419, Sec. 1.18, eff. Sept. 1, 1995.

Sec. 62.0026. SEPARATION OF RESPONSIBILITIES. The board shall develop and implement policies that clearly separate the policymaking responsibilities of the board and the management responsibilities of the commissioner and the staff of the department.

Added by Acts 1995, 74th Leg., ch. 419, Sec. 1.18, eff. Sept. 1,

1995.

Sec. 62.0027. BOARD MEMBER TRAINING. (a) Before a member of the board may assume the member's duties, the member must complete at least one course of the training program established under this section.

(b) A training program established under this section shall provide information to the member regarding:

(1) Chapter 64, this chapter, and the enabling legislation that created the board;

(2) the programs operated by the board;

(3) the role and functions of the board;

(4) the rules of the board with an emphasis on the rules that relate to disciplinary and investigatory authority;

(5) the requirements of:

(A) Chapter 551, Government Code;

(B) Chapter 552, Government Code; and

(C) Chapter 2001, Government Code;

(6) the requirements of the conflict of interest laws and other laws relating to public officials; and

(7) any applicable ethics policies adopted by the department or the Texas Ethics Commission.

Added by Acts 1995, 74th Leg., ch. 419, Sec. 1.18, eff. Sept. 1, 1995.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 4.05, eff. September 1, 2009.

Sec. 62.003. CLASSES OF CERTIFIED SEED. (a) The four classes of certified seed and plants are Breeder, Foundation, Registered, and Certified.

(b) A Breeder seed or Breeder plant is directly controlled by the originating or sponsoring person or the person's designee and is the primary source for the production of seed and plants of the other classes.

(c) A Foundation seed or Foundation plant is the progeny of Breeder or Foundation seed or plants and is produced and handled

under the procedures established, in accordance with federal requirements, by a seed or plant certifying agency for the Foundation class of seed or plants for the purpose of maintaining genetic purity and identity.

(d) A Registered seed or Registered plant is the progeny of Breeder or Foundation seed or plants and is produced and handled under procedures established, in accordance with federal requirements, by a seed or plant certifying agency for the Registered class of seed or plants for the purpose of maintaining genetic purity and identity.

(e) A Certified seed or Certified plant is the progeny of Breeder, Foundation, or Registered seed or plants, except as otherwise provided by federal law, and is produced and handled under procedures established, in accordance with federal requirements, by a seed or plant certifying agency for the Certified class of seed or plants for the purpose of maintaining genetic purity and identity.

Acts 1981, 67th Leg., p. 1134, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 62.004. ELIGIBILITY FOR AND STANDARDS OF CERTIFICATION. (a) The board may establish, not inconsistent with federal law, the eligibility of various kinds and varieties of seed and plants for genetic purity and identity certification and the procedures for that certification.

(b) The board may establish standards of genetic purity and identity, not inconsistent with federal law, for classes of certified seed and plants for which the board determines that standards are desirable. In establishing the standards, the board may consider all factors affecting the quality of seed and plants.

(c) The board shall report to the department the kinds and varieties of seed and plants eligible for certification and the standards adopted for certification eligibility.

Acts 1981, 67th Leg., p. 1135, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 62.005. LICENSING OF PRODUCERS OF FOUNDATION, REGISTERED, OR CERTIFIED SEED. (a) A person who wants to produce a certified class of seed or plant for which the board has established

standards of genetic purity and identity may apply to the board for licensing as a Foundation, Registered, or Certified producer of seed or plants. To be licensed as a producer, a person must satisfy the board that:

(1) he or she is of good character and has a reputation for honesty;

(2) his or her facilities meet board requirements for producing and maintaining seed or plants for the certification generations desired; and

(3) he or she has met any other board requirements as to knowledge of the production or maintenance of seed or plants for the certification generations for which he or she applies to be licensed.

(b) The board may adopt rules governing the production and handling by licensed producers of certified classes of seed and plants to ensure the maintenance of genetic purity and identity.

(c) A license to produce Foundation, Registered, or Certified seed or plants is not transferable and is permanent unless revoked as provided in this chapter. A person licensed as a producer of Foundation, Registered, or Certified seed or plants is eligible to produce certified seed or plants, as provided in the license, of the class for which he or she is licensed or of any lower class of certified seed or plants, as determined by the board.

(d) An application for licensing as a Foundation, Registered, or Certified producer of seed or plants must be accompanied by a fee, as provided by department rule.

Acts 1981, 67th Leg., p. 1135, ch. 388, Sec. 1, eff. Sept. 1, 1981.  
Amended by Acts 1989, 71st Leg., ch. 230, Sec. 40, eff. Sept. 1, 1989; Acts 1995, 74th Leg., ch. 419, Sec. 2.23, eff. Sept. 1, 1995.

Sec. 62.006. REGISTRATION OF PLANT BREEDERS. (a) A person engaging in the development, maintenance, or production of seed or plants for which standards of genetic purity and identity have been established by the board may apply to the board for registration as a plant breeder. The applicant shall apply on forms prescribed by the board and shall include with the application a registration fee, as determined by the board. To be registered as a plant

breeder, a person must satisfy the board that the person is skilled in the science of plant breeding. The board may require skill to be shown by evidence of accomplishments in the field and may require an oral or written examination in the subject.

(b) A certificate of registration is not transferable and is permanent unless revoked as provided in this chapter.

Acts 1981, 67th Leg., p. 1135, ch. 388, Sec. 1, eff. Sept. 1, 1981.  
Amended by Acts 1995, 74th Leg., ch. 419, Sec. 2.24, eff. Sept. 1, 1995.

Sec. 62.0065. NOTICE AND ANALYSIS OF EXAMINATION RESULTS.

(a) Not later than the 30th day after the date on which a licensing or registration examination is administered under this chapter, the board shall notify each examinee of the results of the examination. However, if an examination is graded or reviewed by a national testing service, the board shall notify examinees of the results of the examination not later than the 14th day after the date on which the board receives the results from the testing service. If the notice of examination results graded or reviewed by a national testing service will be delayed for longer than 90 days after the examination date, the board shall notify the examinee of the reason for the delay before the 90th day. The board may require a testing service to notify examinees of the results of an examination.

(b) If requested in writing by a person who fails a licensing or registration examination administered under this chapter, the board shall furnish the person with an analysis of the person's performance on the examination.

Added by Acts 1989, 71st Leg., ch. 230, Sec. 41, eff. Sept. 1, 1989.  
Amended by Acts 1995, 74th Leg., ch. 419, Sec. 1.19, eff. Sept. 1, 1995.

Sec. 62.008. CERTIFICATION OF SEED AND PLANTS. (a) The department is the certifying agency in Texas for the certification of seed and plants. The department shall employ a sufficient number of inspectors to carry out the inspection provisions of this chapter. Inspectors must meet qualifications set by the board.

(b) A person who is licensed as a Foundation, Registered, or



Certified seed or plant producer or who is registered as a plant breeder is eligible to have seed or plants of an eligible class and variety certified by the department. On request by a licensed producer or a registered plant breeder to have seed or plants certified, the department shall inspect the producer's or registrant's fields, facilities, and seed or plants. Inspection may include tests approved by the board and carried out by inspectors under the authority of the department.

(c) After inspection, if the department determines that the production of seed or plants has met the standards and rules prescribed by the board, it shall cause to be attached to each container of the product a label identifying the seed or plant and the certified class and including other information required by statute or by rule of the board. The department shall prescribe the format of the label.

(d) The department shall fix and collect a fee for the issuance of a certification label in an amount necessary to cover the costs of inspection and labels.

Acts 1981, 67th Leg., p. 1137, ch. 388, Sec. 1, eff. Sept. 1, 1981.  
Amended by Acts 2001, 77th Leg., ch. 52, Sec. 9, eff. May 7, 2001.

Sec. 62.009. SEED AND PLANTS FROM OUTSIDE THE STATE. (a) The department may adopt rules, including testing requirements and standards, which must be met before seed or plants represented to be of a certified class may be shipped into the state for distribution in the state. The rules adopted shall be designed to ensure buyers in the state of having available certified seed and plants of known origin, genetic purity, and identity and shall correspond to appropriate rules used in certifying seed and plants produced in Texas.

(b) The department may require inspections of seed and plants represented to be of a certified class and shipped into the state for distribution in the state and may collect fees to cover costs of inspection, as determined by the department. The department may require inspection fee payment before distribution in the state.

(c) A person may not distribute in this state seed or plants

represented to be of a certified class and shipped into the state for distribution in the state, unless the person has first complied with any rules, including testing requirements, adopted by the department for seed or plants shipped into the state.

(d) A person may not sell or offer for sale in this state seed or plants represented to be of a certified class and shipped into the state for distribution in the state, unless the seed or plants have been certified by an official certifying agency in the state, province, or country of origin or have been certified by the department.

(e) Seed or plants shipped into the state for distribution in the state which are represented to be of a certified class and which are found by the department after investigation to violate the requirements of this section are restricted from distribution. In addition, the department may order the seed or plants in violation confiscated and retained under general supervision of the department. An owner or consignee of restricted or confiscated seed or plants may appeal the order by filing an appeal within 10 days of the order. Appeal is in the county court of the county where the seed or plants are restricted or were confiscated. The appeal in county court is by trial de novo. If no appeal is filed as provided in this section or if after an appeal in county court, the department's action is not reversed, the department may destroy confiscated seed or plants.

Acts 1981, 67th Leg., p. 1137, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 62.010. REVOCATION, MODIFICATION, OR SUSPENSION OF REGISTRATION OR LICENSE. (a) The department shall revoke, modify, or suspend the registration or license of a registered plant breeder or licensed producer of Foundation, Registered, or Certified seed or plants, place on probation a person whose registration or license has been suspended, or reprimand a registrant or licensee if the person makes exaggerated claims for products, fails to observe any rule governing the maintenance and production of a certified class of seed or plants that he or she is registered or licensed to produce or maintain, or violates another requirement of this chapter or a rule adopted by the board or the

department under this chapter.

(b) If a suspension of a license or registration is probated, the department may require the person to:

(1) report regularly to the department on matters that are the basis of the probation;

(2) limit practice to the areas prescribed by the department; or

(3) continue or renew professional education until the person attains a degree of skill satisfactory to the department in those areas that are the basis of the probation.

(c) If the department revokes a registration or license, the department shall order the cancellation and withdrawal of all appropriate certification labels previously issued for the seed or plants.

(d) If the department proposes to revoke, modify, or suspend a person's registration or license, the person is entitled to a hearing conducted under Section [12.032](#). The board shall prescribe procedures by which all decisions of the department to revoke, modify, or suspend a registration or license issued under this chapter are appealable to the board.

Acts 1981, 67th Leg., p. 1138, ch. 388, Sec. 1, eff. Sept. 1, 1981.  
Amended by Acts 1989, 71st Leg., ch. 230, Sec. 42, eff. Sept. 1, 1989; Acts 1995, 74th Leg., ch. 419, Sec. 3.09, eff. Sept. 1, 1995.

Sec. 62.011. PENALTIES. (a) A person commits an offense if the person:

(1) sells or offers for sale in this state seed or plants with labeling or packaging accompanying the seed or plants using the terms "from officially inspected fields," "state inspected," "approved seed," "approved plants," "approved sods," "approved trees," "inspected fields," "foundation seed," "certified plants," or terms having the same meaning, unless the seed or plants have been certified as Foundation, Registered, or Certified seed or plants;

(2) represents himself or herself to be a registered plant breeder or licensed producer of Foundation, Registered, or Certified seed or plants unless he or she has been registered or

licensed under this chapter;

(3) sells or offers for sale in this state Foundation, Registered, or Certified seed or plants that are not in compliance with this chapter or with the rules adopted under this chapter;

(4) sells or offers for sale seed or plants represented to be certified in explicit oral or written statements or by misleading oral or written statements if the seed or plants have not been certified or have not been certified as being of the class of which they are represented;

(5) violates Section 62.007(c) of this code; or

(6) violates Section 62.009(c), (d), or (e) of this code.

(b) An offense under Subsection (a)(1), (a)(2), (a)(5), or (a)(6) of this section is a Class C misdemeanor.

(c) An offense under Subsection (a)(3) or (a)(4) of this section is a Class B misdemeanor.

Acts 1981, 67th Leg., p. 1138, ch. 388, Sec. 1, eff. Sept. 1, 1981.  
Amended by Acts 1989, 71st Leg., ch. 230, Sec. 43, eff. Sept. 1, 1989.